IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 6 of 2001

to

FIRST APPEALNo 60 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA
and
Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT THRO'
Versus
SHANABHAI HIRABHAI

Appearance:
Mr.Umesh Trivedi, learned A.G.P. for the appellant No.1.
Mr.N.D.Gohil, learned A.G.P. for appellant No.2.
MR PRASHANT MANKAD for Respondents.

CORAM : MR.JUSTICE M.R.CALLA
and

MR.JUSTICE J.R.VORA

Date of decision: 13/02/2001

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE M.R.CALLA)

All these 55 First Appeals are directed against the common judgment and order dated 5.11.99 passed by 8th Joint Civil Judge (S.D.), Vadodara in Land Reference Case Nos.169/97 to 172/97, 235/97 to 267/97, 175/97 to 192/97, the main case being Land Reference Case No.259/97. Therefore, we proceed to decide all these 55 Appeals by this common judgment and order as under:-

The lands of the land owners of Kayavarohan were sought to be acquired at the instance of Sardar Sarovar Narmada Nigam for Karvan Main Canal and Bhamangham Branch Canal Project and for that purpose in Land Acquisition Cases Nos.47/93, 108/94, 35/92, 100/94, 99/94 and 167/91 the Notifications under Sec.4 were issued on 16-12-93, 13-04-95, 20-5-93, 16-3-95, 16-3-96 and 17-1-94 respectively. The Notifications under Sec.6 were then issued on 30-10-95, 13-06-95, 30-11-95, 6-6-96, 6-6-96 and 7-12-95 respectively. The Land Acquisition Officer has decided the cases on 21.8.96, 5.7.96 and 25.9.96. The Land Acquisition Officer determined the rate of compensation at Rs.2.20 Ps. per sq.mt. for non irrigated land and Rs.3.30 Ps. per sq.mt. for irrigated land. The compensation, as per the rates determined by the Land Acquisition Officer, has already been paid to the claimants and the same has been accepted under protest by the claimants. The claimants were not satisfied with the order passed by the Special Land Acquisition Officer and they took the matter to the Reference Court under Sec.18 of the Act claiming Rs.100/-- per sq.mt. The Reference Court has decided the above Land Acquisition Cases and determined the rate of compensation as Rs.37.50 Ps. per sq.mt. minus the amount as was determined by the Special Land Acquisition Officer.

The State of Gujarat through Special Land Acquisition Officer and Executive Engineer,Narmada Project, Canal Division, being aggrieved from this common judgment and order dated 5.11.99 passed by the Reference Court has filed these 55 Appeals.

Mr. Umesh Trivedi, learned A.G.P. has submitted that the previous award Exh.22 was there on record and the rate of compensation should have been determined in terms of such previous award. Exhs.101 to 105 were also

on record. However, the Reference Court has not determined the compensation on the basis of the previous awards but has proceeded to determine the rate of compensation on the basis of the yield, for which no documentary evidence whatsoever had been tendered on behalf of the claimants. Mr.Trivedi has also submitted that in the previous award rate of compensation has been determined as Rs.12.75 Ps. per sq.mt. wherein the date of Notification under Sec.4 was 24.10.95. He submitted that in this view of the matter, in no case the compensation could exceed Rs.12.75 Ps. per sq.mt. inasmuch as the date of Notification under Sec.4 in these cases is between 1993 to 1996 and all the dates, except 16.3.96, in these cases are dates prior to date of Notification under Sec.4 in the previous award, in which the rate of compensation was determined at Rs.12.75 Ps., particularly when the date of Notification under Sec.4 was 24.10.95 and 24.10.95 is also in close proximity with the latest date of 16.3.96 i.e. the Land Reference Case Nos.247/97 to 258/97 as per the details which are given in the tabular form at page 10 of the impugned award in para (3).

Mr. Mankad appearing on behalf of the respondents claimants has not disputed the fact that on the basis of the previous awards Exh.22, 101 to 105 the rates could not exceed Rs.12.75 Ps. per sq.mt but he has submitted that on the basis of the evidence, which was led with regard to the yield, the rate could have been determined in any figure between Rs.20/-- to Rs.30/-- per sq.mt. He has invited the attention of the court to the documents at Exhs.95 to 100 i.e. yearly reports of the Agricultural Produce Market Committee, Dabhoi in respect of the yield and he has also submitted that out of the irrigated lands, two to three crops could be taken on these lands and, therefore, over and above the rate of Rs.12.75 Ps. per sq.mt., as was granted in the previous Awards Exhs.22, 101 to 105, some more amount has to be granted on the basis of the higher fertility of the lands in question and for that purpose aid could be taken from the evidence which was led on this aspect of the matter by the claimants.

We have heard learned counsel for both the sides and have also perused the record. In no case the evidence of the previous awards, which was already there, could be ignored by any Reference Court while passing the award.The Reference Court has, in our opinion, erred in basing the entire award on the yield, ignoring the previous awards altogether. The date with regard to issue of the Notification under Sec.4 in case of previous

award being 24.10.95 is not in dispute. Similarly the yield evidence in the form of yearly statement issued by the Agricultural Produce Market Committee Exhs.95 to 100 pertaining to the year 1991-92 is also not disputed and it is reported that at the relevant time, rate of the cotton was Rs.900/-- to Rs.1822/-- per quintal. The value of the crop or yield may vary from year to year. But in the facts of the present case when the evidence has come on record with regard to the yield of the cotton in the year 1991-92, the same ought to have been taken into consideration for the purpose of determining the rate of compensation so as to give little more benefit to the claimants over and above the rate of Rs.12.75 Ps. per sq.mt. as was granted in the previous awards. In any case, we do not find any justification for the rate of compensation as determined by the trial court at Rs.37.50 Ps. per sq.mt. and in the facts of the present case, we find that the rate be determined at Rs.20/-- per sq.mt. out of which a sum of Rs.2.20 Ps. is to be reduced for non irrigated land and Rs.3.30 Ps. is to be reduced for irrigated land. The impugned award, therefore, deserves to be modified accordingly and we hereby order that the impugned award shall be modified by awarding the compensation at the rate of Rs.20/-- per sq.mt. minus Rs.2.20 per sq.mt. = Rs.17.80 Ps. per sq.mt. for non irrigated land and at the rate of Rs.20/-- per sq.mt. minus 3.30 Ps. = Rs.16.70 Ps. per sq.mt. for irrigated land. The impugned award dated 5.11.99, therefore, stands modified accordingly. Rest of the terms,as ordered by the trial court, remain intact.

All these 55 Appeals are partly allowed, as above. No order as to costs. The decree be drawn accordingly. Record and proceedings be returned forthwith.

(M.R.Calla,J)

(J.R.Vora,J)